

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EDWARD E. KAMUCK,	:	CIVIL ACTION NO. 4:11-CV-1425
Plaintiff	:	
	:	(Judge Conner)
v.	:	
	:	
SHELL ENERGY HOLDINGS GP,	:	
LLC, <i>et al.</i>,	:	
Defendants	:	

MEMORANDUM

Presently before the court is plaintiff's objection (Doc. 34) to the Report and Recommendation (Doc. 33) of the Honorable Martin C. Carlson, United States Magistrate Judge, dated March 19, 2012. The objection is quite limited in scope. It seeks only to avoid the dismissal of defendant Shell Energy Holding LP, LLC, as recommended by Judge Carlson. The court has reviewed the materials submitted by plaintiff's counsel and, without adopting any view as to the merits of plaintiff's claims or legal theories, the court finds merit to the objection in that plaintiff should be permitted to explore the nature and scope of this defendant's status vis-a-vis the remaining defendants.

Accordingly, the court will sustain plaintiff's objection. In all other respects, the court will adopt the Report and Recommendation of Judge Carlson. Inasmuch as the parties have consented to proceed before Judge Carlson pursuant to 28 U.S.C. § 636(c), see Doc. 38, the court shall issue an order of reference consonant with the parties' wishes.

An appropriate order follows.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

Dated: April 27, 2012

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EDWARD E. KAMUCK,	:	CIVIL ACTION NO. 4:11-CV-1425
Plaintiff	:	
	:	(Judge Conner)
v.	:	
	:	
SHELL ENERGY HOLDINGS GP,	:	
LLC, et al.,	:	
Defendants	:	

ORDER

AND NOW, this 27th day of April, 2012, upon consideration of the Report and Recommendation (Doc. 33) of Magistrate Judge Carlson recommending that defendants' motion to dismiss (Doc. 11) be granted, and for the reasons stated in the accompanying memorandum, it is hereby ORDERED that:

1. The Report and Recommendation (Doc. 33) are REJECTED in that defendants' motion to dismiss (Doc. 11) is DENIED with respect to Shell Energy Holding LP, LLC.
2. In all other respects the Report and Recommendation are ADOPTED as follows:
 - a. Defendants' motion to dismiss (Doc. 11) is GRANTED with respect to:
 - (i) Plaintiff's breach of contract claim (Count 1);
 - (ii) Plaintiff's breach of duty of fair dealing claim (Count 2);
 - (iii) Plaintiff's declaratory judgment claims, which the court construes as being premised upon issues of contract interpretation (Counts 3, 4 and 5);
 - (iv) Plaintiff's anticipatory trespass claim (Count 6); and
 - (v) Plaintiff's negligence *per se* and gross negligence claims. (Count 9)

- b. Defendants' motion to dismiss plaintiff's remaining tort claims (Counts 8, 9 and 10) is DENIED.
- c. Defendants' motion to strike (Doc. 13) is GRANTED as to plaintiff's breach of contract punitive damage claim, but DENIED in all other respects.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge